

## **COUNTRY REPORT: BELGIUM**

### **Marine Spatial Planning and the Protection of the Marine Environment in the Belgian Part of the North Sea**

Thary Derudder and Frank Maes

#### **Introduction**

With a surface of 3454km<sup>2</sup>, or barely 0.5% of the total surface area of the North Sea, the Belgian part of the North Sea (BNS) can hardly be named impressive. The BNS only stretches out 83km from the coast and has a coastline that measures approximately 65 km. The maximum depth is about 45 meters, with an average of only 20 meters or less due to the presence of about thirty sandbanks. Nevertheless, the BNS is one of the busiest sea areas in the world, aggregating a huge variety of activities, such as: shipping, fishing, renewable energy developments, potential aquaculture, dredging works, sand and gravel extraction, tourism, military exercises and nature conservation. Together they serve a plurality of economic, ecological, social, cultural and safety objectives. Some activities are mobile (fishing, shipping) or temporary (dredging, sand exploitation), while others are fixed (offshore wind mills); some activities can be combined (shipping, fishing and dredging) while others cannot. To avoid conflicts between users, spatial planning is required, either to separate activities or to plan their coexistence. This can be achieved by marine spatial planning (MSP). MSP is often seen as a planning tool, encompassing a process leading to a spatial management plan. Belgium is one of the first countries that developed a MSP, but it took until 20 March 2014 to adopt a legally binding plan that is based on predefined processes, including stakeholder participation and public participation.<sup>1</sup> In many countries MSP fails due to a lack of 'authority'. Without a clear mandate and authority a lot of MSP attempts result in constant competence bickering between the various government institutions involved in ocean management. Belgium avoided this pitfall by appointing a minister coordinating the federal competences over the North Sea.

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<sup>1</sup> Royal Decree of 20 March 2014 establishing the marine spatial plan, *Belgian Official Gazette (BOG)* 28 March 2014, 26936.

## History and Evolution of the MSP

The new MSP is to a large extent based on the so-called 'Master Plan North Sea'. Phase one of this Master Plan (2003) was based on the Law of 1999 on the exclusive economic zone in Belgium, and was clearly designed from an economic perspective (sand and gravel extraction and exploitation of renewable energy). Phase two of the master plan (2005) implemented the nature conservation measures foreseen in the 1999 Law on the protection of the marine environment in the sea areas under Belgian jurisdiction.<sup>2</sup>

## The 2014 Marine Spatial Plan

### *Legal Basis*

The 2014 MSP has its legal basis in the Law on the protection of the marine environment in the sea areas under Belgian jurisdiction. A legislative amendment of 20 July 2012<sup>3</sup> alters the heading of the law, which is now called the Law on the protection of the marine environment and organizing MSP in the sea areas under Belgian jurisdiction (referred to as the Law herein). By choosing this Law as the legal basis for the MSP, the federal parliament opted for a clear environmental dimension. The environmental principles on which this Law is based, namely the principle of prevention, the precautionary principle, the sustainable development principle, the polluter pays principle and the recovery principle, are fundamental environmental principles that both the users and the government must take into account when operating in the BNS. Government is required to take these principles into account when developing the MSP (art. 4 Law). The Law includes a brief, but important chapter on the organisation of the MSP. The Law also provides a mandate for the executive powers to further elaborate and adopt legislation for the planning process by making use of Royal Decrees. This mandate requires consultation with the sectors and agencies concerned (stakeholders), and contains a procedure with at least the following obligations: 1. a planning process; 2. a public investigation; 3. a strategic environmental impact assessment concerning the new plan; and 4. an amendment procedure for the plan. The amendment procedure indicates the adaptive character of the planning process and plan. Once the plan has been accepted by a Royal Decree discussed in the Council of Ministers,

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<sup>2</sup> Law of 20 January 1999 protecting the marine environment in the sea areas under Belgian jurisdiction, *BOG* 12 March 1999, 8033.

<sup>3</sup> Law of 20 July 2012 amending the law of 20 January 1999 protecting the marine environment in the sea areas under Belgian jurisdiction, with respect to the organization of the marine spatial planning, *BOG* 11 September 2012, 56962.

the plan becomes legally binding for both the users of the North Sea, as well as for government. The plan will be evaluated every six years, and altered if necessary. The Law also establishes an advisory commission competent to provide non-binding advice. Finally, this Law also lays out the substantive elements for the spatial plan. The plan starts from a spatial analysis of the BNS and develops a long term vision, indicating the measures, instruments and actions necessary to implement the plan. The plan aims to pursue economic, social and environmental objectives (components of sustainable management) as well as safety objectives, and should indicate how these objectives will be achieved (art. 5bis Law).

*The Royal Decree of 20 March 2014 Adopting the MSP for the BNS.*

The new MSP was adopted by a Royal Decree on 20 March 2014 and is the product of a series of consultations with scientists, stakeholders and the public at large. The MSP includes 4 annexes. The first annex provides a spatial analysis of the BNS, discusses its physical features and the current environmental and natural situation, provides an inventory of the current activities, an overview of the spatial synergy and possible conflicts and clarifies the planning and the policy context. Annex 2 contains a long term vision, the objectives, indicators and spatial policy choices made for the BNS. Annex 3 contains actions for executing the MSP and annex 4 holds the maps for the new spatial plan. These maps are indicative since they lack exact coordinates. The precise coordinates can be found in the Royal Decree itself.

*Reaching the Transparent Proposed Environmental Goals*

As was mentioned above, annex 3 of the MSP Royal Decree sets forth the actions that government wishes to implement by 2020. The environmental objectives of the MSP are fourfold: 1. obtaining a 'good environmental status' under the EU Marine Strategy Framework Directive (2008/56/EG) and reaching a good status for coastal surface water according to the Water Framework Directive (2000/60/EG); 2. obtaining a favourable conservation status according to the Habitat and Birds Directives; 3. implementing the biodiversity strategy under the Convention on Biological Diversity (Aichi targets 2011-2020) and; 4. stimulating sustainable energy growth at sea.

## New Rules under the MSP to Protect the Marine Environment

The seabed and the integrity of its ecosystems are threatened by many activities in and on the North Sea. Since the seabed is of vital importance for several ecosystems, any external activity, such as sand and gravel extraction, dredging and trawl fishing, causing alterations to the seabed, can have harmful consequences for the marine environment (MSP Royal Decree annex 1, 34). MSP therefore introduces a number of measures to protect the marine environment from these threats.

### *Nature Protection and Fishing*

In the upcoming planning period of six years, the MSP does not envisage the establishment of any new marine protected areas (MPAs), nor does it envisage changes to the delimitation of existing MPAs. Instead, the focus of the MSP lies on implementing effective protective measures in the already existing MPAs (*MSP Royal Decree 17 annex 2*).

The MPAs situated in the BNS were designated by a Royal Decree of 2005<sup>4</sup> (three special protective areas for birds (SPAs) and two zones for nature conservation as habitats, namely 'the Trapegeer Stroombank' and 'the Vlakte van Raan'<sup>5</sup>) (see Map 1 & 2 *infra*). A Royal Decree of 2006<sup>6</sup> created a marine reserve east of the port of Sea Bruges adjacent to the Flemish reserve at the beach of Knokke-Heist (Bay of Heist), which has been extended by a Royal Decree of 2012.<sup>7</sup> This Royal Decree of 2012 leaves out 'the Vlakte van Raan', since the Council of State ruled that there was insufficient scientific proof to justify the protection of

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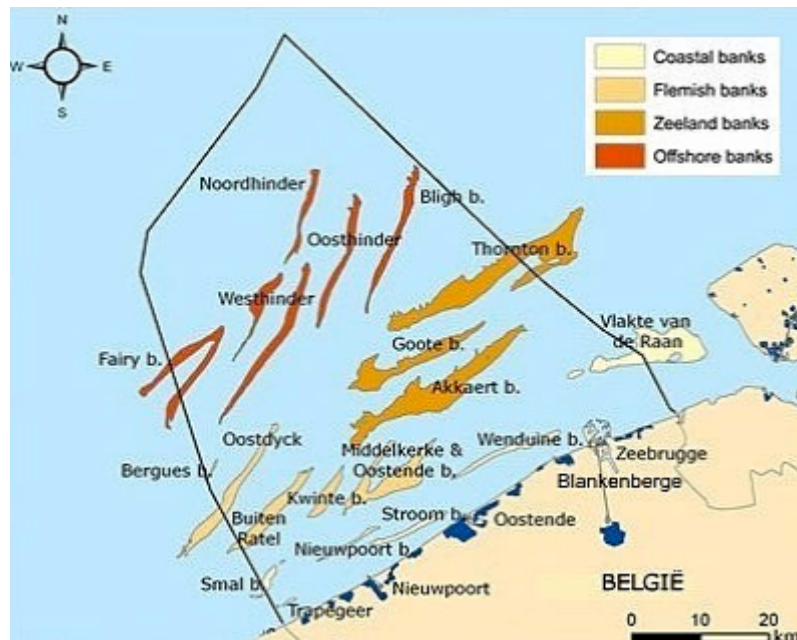
<sup>4</sup> Royal Decree of 14 October 2005 establishing special protective zones and special zones for nature preservation in the sea areas under Belgian jurisdiction, *BOG* 31 October 2005, 47207.

<sup>5</sup> Trapegeer, Stroombank and the Vlakte van Raan are sandbanks located in the BNS.

<sup>6</sup> Royal Decree of 5 March 2006 establishing a focused marine reserve in the sea areas under Belgian jurisdiction and amending the Royal Decree of 14 October 2005 establishing special protective zones and special zones for nature preservation in the sea areas under Belgian jurisdiction, *BOG* 27 March 2006, 17242.

<sup>7</sup> Royal Decree of 16 October 2012 amending the Royal Decree of 14 October 2005 establishing special protective zones and special zones for nature preservation in the sea areas under Belgian jurisdiction, *BOG* 5 November 2012, 66465.

this zone<sup>8</sup> and it adds 'the Flemish banks' as a special zone for nature conservation with a surface of about 1100 km<sup>2</sup>, containing SPA 1, about half SPA 2 and 'the Trapegeer Stroombank'. In total the MPAs in the BNS cover a surface of about 1240 km<sup>2</sup>, which is slightly over 1/3 of its total surface (see Map 1 & 2 *infra*).



Map 1. Source [www.seawitch.be](http://www.seawitch.be)

In the SPAs for birds certain activities are prohibited, namely civil engineering, industrial activities and activities of advertising and commercial enterprises (art 5 Royal Decree 2005 and art. 7§5 MSP Royal Decree). The MSP Royal Decree adds the phrase 'for as far as these activities are not submitted to an appropriate assessment'. This entails that the prohibited activities mentioned above can take place under certain stringent conditions and if proven not to have an effect on the conservation targets. An assessment of the consequences of these activities for the protection of birds needs to be done, taking into account the area-specific conservation objectives (art. 1°14 MSP Royal Decree). This new phrase introduced in the Royal Decree therefore creates more flexibility in allowing certain activities in the SPA's. The protective measures that are specific to each species in SPA 1 and SPA 2 are taken over from the 2005 Royal Decree in article 7§6 of the MSP Royal Decree.

<sup>8</sup> See H. SCHOUKENS, A. CLIQUET & F. MAES, "Wind Farm Development in the Belgian Part of the North Sea: A Policy Odyssey without Precedent", *Zeitschrift für Europäisches Umwelt- und Planungsrecht* 2012, 304-312.

All activities are prohibited in the marine reserve 'Bay of Heist', save for supervision and control, monitoring and scientific research commissioned by government, shipping, professional fisheries, management, conservation, restoration or nature development measures and military activities, as foreseen in the Law (art. 8 Law 1999). The Royal Decree of 2006 further allows the placing and maintenance of cables and pipelines, the digging of trenches and the raising of the sea bottom, and activities that are the subject of a user agreement (art.5 Royal Decree 2006). The MSP Royal Decree adds activities to the list that have been subject to an appropriate assessment (art. 7 §9 MSP Royal Decree).

The Royal Decree of 2005 and the Royal Decree of 2012 forbid the following activities in the habitat area 'Trapegeer Stroombank': activities of civil engineering, industrial activities, activities of advertising and commercial enterprises (art. 5 Royal Decree 2005) and the deposit of dredging species and inert materials of natural origin (art. 2 Royal Decree 2012). The MSP Royal Decree takes over these prohibitions and adds once again the phrase 'for as far as these activities are not submitted to an appropriate assessment' (art. 7§3 MSP Royal Decree), being an assessment of the consequences for that zone, taking into account the area-specific conservation objectives.

By including the provisions concerning which activities are allowed in the MPAs contained in the Royal Decrees of 2005, 2006 and 2012, in the MSP Royal Decree, the legislator has clearly indicated its will to respect these provisions when allowing activities in the MPAs under the MSP.

As has become clear above, the MSP Royal Decree introduces the possibility to allow certain activities in an MPA after they have been subjected to an appropriate assessment. This allows more flexibility when permitting activities in MPAs under the MSP while at the same time respecting the conservation targets set forth in each MPA.



Map 2. Source: [www.health.belgium.be/eportal](http://www.health.belgium.be/eportal)

Due to its shallow coastal waters and sand banks, the BNS is a productive fishing area with intensive fisheries. The majority of fishermen in the BNS make use of beam trawls that severely damage the seabed and the species depending on it as a habitat. In order to preserve and strengthen the richness of the BNS, to ensure the integrity of the seabed and to make the fishing industry more sustainable and cost-efficient, the MSP strives towards sustainable fisheries. The MSP Royal Decree introduces for the first time in a MSP context, measures towards a certain type of fisheries in particular areas. The Decree and the plan indicate four zones in the area of 'the Flemish Banks' wherein limitations are imposed to certain fishing techniques to protect the integrity of the seabed with the objective to reach a good environmental status. These zones have been selected on the basis of their vulnerability, high biological value and the measures that have been taken with a view to repairing the sandbank and reef-habitats. In zone 1, located in 'the Trapegeer Stroombank' from the French-Belgian coast up to and past Newport, the existing coastal fishing industry is required to use rolling beam heads on its fishing gear, and for shrimp fishing the use of separator trawls is obligatory (see Map 3). Existing vessels can be replaced, but in zone 1 new vessels can only fish with techniques that do not disturb the seabed. Zone 1 lies within the 45 nautical miles zone, measured from the baseline, wherein it is forbidden to fish with

vessels above 70 gross tonnage (see Map 3). In the second zone, located approximately in between Newport and Ostend, beginning from the 4,5 nautical miles line further seawards, existing fishing techniques remain valid for a further three years as a transition period to the abolition of the use of bottom trawling techniques. Testing alternative bottom trawling techniques however remains possible (see Map 3). In zone 3, which is the furthest from the coast and is situated in the exclusive economic zone nearby the 'Westhinderbank', only non-bottom trawling fishing techniques are allowed. This is the zone where the strictest fishing limitations apply (see Map 3). Finally, in the fourth zone, situated at the 'Westhinderbank' adjacent to zone three, only non-bottom trawling techniques can be used, leaving however the possibility to test alternative bottom trawling techniques (see Map 3). Zones 2 and 4 are thus reserved for testing new fishing techniques that have a smaller impact on the life on the seabed (MSP Royal Decree annex 2, 17-18 and 34-35).



Map 3. Source: [www.health.belgium.be/eportal](http://www.health.belgium.be/eportal)

All of these fishing limitations apply to Belgian fishing vessels. They will, however, in certain zones impact fishing activities by other EU member states as well, especially Dutch and to a lesser extent French vessels. To ensure that the fishing restrictions are enforceable against



foreign ships, the approval of the EU Commission will be required on the basis of scientific evidence supporting the reasons why these measures are necessary.

As for sports fishing, the idea is that this is allowed in the Flemish Banks, in so far as the seabed will not be disturbed, for example fishing with a fishing rod is permitted. Two specific types of fishing that disturb the seabed are, however, not prohibited: 1. shrimp fishing by horse or on foot and; 2. recreational shrimp fishing using bottom trawling techniques by fishermen who have been active for at least three years – such fishermen can continue to sail a maximum of ten times a year after obtaining a permission from the minister for a maximum period of six years (MSP Royal Decree annex 2, 17). In the so-called 'Paardenmarkt' area (the munition deposit), nearby Knokke-Heist, any activity that disturbs the seabed is prohibited for safety reasons.

### *Sustainable Energy Development*

One of the most spectacular developments introduced by the MSP is the designation of two zones for electricity storage (energy-atolls). One zone is situated on the 'Wenduinebank' and another seawards North East of the harbor of Sea Bruges. This entails that two islands can be constructed for the storage of electricity in combination with active nature conservation developments (MSP Royal Decree annex 2, 24-25)(see Map 2). New infrastructures at sea, such as wind energy facilities, energy atolls, etc. – if optimally developed- offer the potential for an increase in biodiversity (MSP Royal Decree annex 2, 19). An example of this is the creation of two artificial reefs that are already in place within the windmill parks of C-power and Belwind (see Map 2).

### *Sand and Gravel Extraction*

To fulfill the needs of the building industry and coastal protection, an annual amount of about 2-3 billion m<sup>3</sup> sand and gravel is extracted from the BNS. This is done within four areas and is subject to a permit and a reporting duty. By paying compensation for every m<sup>3</sup> extracted, research on the possible environmental consequences is facilitated. The results of this research increase our understanding of possible effects of this exploitation for a particular area at sea. Insofar as environmental harm arising from such extraction activities is detected as part of ongoing monitoring efforts, the zone will temporarily be closed (MSP Royal Decree annex 1, 108-116) (see Map 4).

In order to give a number of sensitive habitats located in the special zone for nature protection 'Flemish banks' the opportunity to recover, a so called appropriate assessment is introduced by the MSP Royal Decree. This is an additional component to the environmental impact assessment for obtaining a concession and permit for sand and gravel extractions in this specific habitat area (MSP Royal Decree annex 2, 38-39) (see Map 4).



Map 4. Source: [www.health.belgium.be/eportal](http://www.health.belgium.be/eportal)

### *Underwater Cultural Heritage*

Although shipwrecks can be considered as a disturbance of the marine environment since they form hard substrates on the seabed of the BNS, which mainly consists of sand, often these shipwrecks have an ecological value as 'rocky' habitats. Research has shown that a rather large amount of biodiversity can be found nearby and on shipwrecks which function as a nursery room for different sorts of fauna and flora. The idea of protecting shipwrecks because of their value as habitats for several species is included in the second annex of the *MSP Royal Decree* (MSP Royal Decree annex 2, 48).

## Conclusion

*The MSP Royal Decree* is based on the 1999 Law on the protection of the marine environment in the BNS and therefore has a clear environmental basis, entailing that the environmental principles as laid down in the Law must be respected when drafting a marine spatial plan and when conducting activities in the BNS. The new MSP has integrated a number of measures to protect the marine environment both directly, focussing on a number of sensitive areas, as well as indirectly. It may therefore be said that the MSP has the potential to benefit and even improve the marine environmental status of the BNS. However since the new plan has only been drafted recently the extent of these possible positive effects will only become clear in the future.